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Gifts of Bank Deposits

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GIFTS OF BANK DEPOSITS.—In *Collins* v. *Collins' Admr.*, 242 Ky. 5, 45 S. W (2d) 811 (1931), the Kentucky Court of Appeals held that where a father deposits money in a savings account in the names of his infant children, with their knowledge and assent, and amid circumstances which show he intended the money to go to them, but retained the passbooks and exercised dominion over the funds by drawing checks in the children's names signed by himself, the acceptance of the gift by the infants was presumed since it was beneficial to them and a completed gift results.

Thus according to this case it is sufficient for a completed gift that the donor intends to make the gift and the donee knows of and accepts it when the money has been deposited in his name, no delivery of the passbook being necessary. The universal rule that there must be a delivery of the *res* to complete a gift is here complied with by the deposit of the funds in the name of the donee coupled with the donative intent on the part of the donor. Intention on the part of the donor to give the money deposited in the bank to the donee is an indispensable element. *Combs* v. *Roark's Admr.*, 221 Ky 679, 299 S. W 576 (1927), *Trevathan's Executor* v. *Dees' Executors*, 221 Ky. 396, 298 S. W 975 (1927). The presumption of intention to make a gift, which naturally arises from the deposit of money in another's name without showing any intent, will prevail unless rebutted by countervailing evidence. There are no Kentucky cases directly on this point but the principal case of *Collins* v. *Collins' Admr.*, *supra*, adopts by way of dictum the reasoning of *Willis* v. *Smyth*, 91 N. Y. 297; Gaffney's Estate, 146 Pa. 49, 23 Atl. 163 (1892). It is also necessary that the donee know of and accept the gift, although as said above, in the case of infants the acceptance of the gift is presumed if they know of it and it is beneficial to them. On this point *Peters' Admr* v. *Peters*, 224 Ky 493, 6 S. W.. (2d) 499 (1928), held that where a father deposited money in a bank in his son's name but the son was never notified of it or delivered the passbook or deposit slip, but learned of it only after his father's death, no valid gift was made.

The general rule, is that where the deposit is made in the donee's name, the intention of the donor to make a gift must be in some way manifested. Notification of the gift to the donee is the usual way of manifesting such intent and is sufficient to render the gift complete, whereas it would not be on the mere deposit of the funds in the donee's name. But this element in addition to mere deposit may be supplied by something other than notification to the donee, so that such notification is not necessary if there are additional elements sufficient to show the intent of the donor. *Harrison* v. *Tatten*, 53 N. Y. App. 178, 85 N. Y. S. 725 (1900), *Boone* v. *Citizens' Saving Bank*, 84 N. Y. 83 (1881), *Martin* v. *Funk*, 75 N. Y. 134 (1878), 3 Ruling Case Law, Sec. 348.

As distinguished from the cases in which the funds given were deposited in the name of the donee, there are several cases in Kentucky in which they were deposited in the donor's name and he gave

the donee the deposit, usually while on his death bed, by delivering the passbook over to the donee. Such cases always require a delivery of some sort. In one case of this kind, *Weber* v. *Salisbury*, 149 Ky. 327, 148 S. W 34 (1912), it was said, "The rule in regard to delivery is that there must be an actual, constructive, or symbolical delivery of the property in question in order to make it a valid gift." In this case it was held that the delivery to the donee of an order to the cashier of the bank to surrender the money deposited to the donee was a sufficient delivery to validate the gift. Another such case, *Burge* v. *Burge's Admr.*, 25 K. L. R. 979, 76 S. W 873 (1903), held that it was a valid gift where money was deposited in the name of the donor and he delivered a certificate of deposit to the depositee and told him to pay the money to the donee. In another case, *McCoy's Admr* v. *McCoy*, 126 Ky. 783, 104 S. W 1031 (1907), in which the donor delivered her passbook to the donee on her death bed, it was said that such a gift was valid whether it was treated as a gift *inter vivos* or a gift *causa mortis*. However in this connection it must be remembered that gifts *causa mortis*, that is, gifts made in anticipation of death, which would not otherwise be made, are always contingent upon the donor dying within a reasonable time and from the anticipated cause.

There is one case in Kentucky contra to these, *Ashbrook* v. *Ryan's Admr.*, 2 Bush 228 (Ky. 1867), in which it was held that the delivery of the passbook to the donee while the donor was on his death bed, was not sufficient to constitute a valid gift *causa mortis*. But this is an old case and does not give its reasons for the decision, and apparently has been overruled.

The above cases requiring delivery have all been cases in which the deposit was in the name of the donor. In *Collins* v. *Collins' Admr.*, *supra, no delivery was required* but the money was deposited in the name of the donee. There is an old Kentucky case directly supporting this decision: *Eversole* v. *First National Bank*, 21 K. L. R. 244, 51 S. W. 169 (1899), in which it was held that where the donor deposited funds in the bank in the donee's name and with his knowledge, but retained the passbook himself and told the cashier not to pay it out without the donor's assent, this constituted a valid gift *inter vivos*. The deposit of the funds in the name of the donee with his knowledge divested the donor of all legal control of the funds.

Thus the prevailing rule in Kentucky as reduced from these cases is:

1. When the deposit is in the name of the donor it is essential to constitute a valid gift that there be a delivery of the passbook or other writing to the donee or to a third person, and that the donor clearly manifest his intention to make the gift. It is not essential that the donee know of it in cases of delivery to a third person. This appears to be a good rule and is the general rule followed throughout the United States: *Culpepper* v. *Culpepper*, 18 Ga. App. 182, 89 S. E. 161 (1916), *Wade* v. *Edwards*, 23 Ga. App. 677, 99 S. E. 160 (1919) *In re Rusk's Estate*, 210 N. Y. S. 588 (1925), *Hudson* v. *Gleason*, 171

Wis. 238, 177 N. W 14 (1920). It is undesirable that delivery of the passbook or certificate of deposit be dispensed with here because in the usual case the donor's lips have been silenced by death before the question comes before the courts and for this reason it is necessary to scrutinize both the delivery and the intention of the donor carefully in order to prevent dishonest practices. Yet this should not be carried to the point of adding a long string of technical requirements to the successful completion of a gift, particularly gifts *causa mortis*, as common experience has shown us that it is an ordinary human failing to neglect provisions and transactions in anticipation of death until the last hour makes unheeded apprehensions grow certain.

2. When the deposit is in the name of the donee, it is not essential for a valid gift that there be any delivery of the passbook if the donee has knowledge of the gift and the donative intent of the donor can be shown. This situation is less frequently found, but where it has developed, the above rule seems to have been followed. *McKinnon* v. *First National Bank*, 77 Fla. 777, 82 So. 748 (1919), *Turner* v. *McManus*, 38 R. I. 35, 94 Atl. 667 (1915), in addition to the two Kentucky cases cited above have followed it. The difference in this situation and the rule governing it from that in No. 1 is that the deposit in the name of the donee serves as the delivery and no delivery of the passbook or other evidence of ownership is necessary. However the mere fact of deposit in the donee's name alone is not sufficient, but must be accompanied by knowledge on the part of the donee that the deposit was made in his name. This is an important element, not only in completing the requirements of delivery, but perhaps also in justifying such a case as *Collins* v. *Collins' Admr.*, *supra*, in which the donor continued to exercise dominion over the funds after depositing them in the donee's name; in which case it may be held that any dominion which the donor exercised over the funds after the donee knows of the deposit in his name, is illegal and of no effect, and therefore such illegal exercise of dominion has no effect on the validity of the gift. This was the reasoning of the court in the principal case. In all gift cases the intention of the donor is an important consideration, and if it can be clearly discovered, should, perhaps, be given more weight than any other element.

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MUNCIPAL CORPORATIONS—LIABILITY ON IMPLIED CONTRACT.—G had a contract to pump water from his mine into a city reservoir for which the city promised to pay one hundred dollars per month. G decided to cease operating the mine, so the city made a new contract to pay twenty dollars a day if G would continue to furnish the water until the city could make other arrangements. The contract was held to be invalid. (Probably because not passed by city ordinance.) This was the case of *Gugenheim* v. *City of Marion*, 242 Ky 350, 46 S. W (2d) 478 (1932), in which the Kentucky Court of Appeals decided that G